

REMARKS

The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

Claim amendments/Status

In this response, independent claim 18 is amended to call for the flexible membrane to be formed as a single piece with the closure element. A new claim 44 is added which calls for the flexible membrane to be directly exposed to the exterior of the container for manual deflection. This is supported by Figure 1 and the associated written description. The subject matter of claim 44 is neither disclosed in nor suggested by the art and therefore is submitted as being allowable for at least these reasons.

The allowance of claims 27-43 is noted with appreciation.

Rejections under 35 USC § 102/103

The rejection of claims 18 and 20-26 under 35 USC § 102(b) as being anticipated by US Pat. No. 5,884,759 to Gueret, is respectfully traversed;

In traverse, the Applicants reiterate essentially the same arguments submitted in the last response in connection with respect to the subject matter of claim 18. That is to say, it is submitted that the Examiner has incorrectly identified some features of the prior art cap as referenced in the text of the specification and in Figures 1 - 6 of the cited prior art to Gueret.

The applicants further submit that the Examiner has misunderstood the invention and on the basis of the examiner's analysis of Gueret, submit that this reference does not anticipate the claimed invention.

The applicants offer the following interpretation of claim 1 of the present invention in relation to the Gueret disclosure (the features described in the following are taken directly from claim 1 of the present application, while the numerals relate to features as shown particularly in Figures 2 — 6 of Gueret);

"a locating element comprising;

a shoulder (22, 34) having an edge (defined by the junction of (22/34)) separating two substantially orthogonal shoulder elements (22, 34)) wherein a first shoulder element (22) is connected to the flexible membrane (25) and the second shoulder element (34) is connected to the outer skirt (17, 18) and an inner skirt (unmarked triangular portion shown for example in Figure 4, the triangular portion forming an inner wall to the cavity 21 which in turn mates with the top of the container(6)) extending from the second shoulder element (34) and spaced a distance from the edge (22/34) wherein the shoulder and inner skirt (x) form an annular bounded ledge (24) extending between the inner skirt (x) and the edge of the shoulder (22, 34) on which a seal can rest so as to span the space formed by the shoulder element and the flexible membrane (25)".

From this analysis, the ledge (24) in Gueret may correspond with the ledge formed between the shoulder element (8) and the inner skirt (9) of the present application.

However, the flexible membrane (25) of Gueret is not unitarily connected to the first shoulder element (22) as required by claim 1 of the present application. While the base (22, 34, 18 and 17 and connecting parts), cover (15) and push button (32) can be formed integrally according to Gueret (column 2, lines 67 to column 3, line 3), the gasket/membrane (23, 25, 26 and 27) is a separate part which is fitted to the base after the base has been closed by fitting a seal (3) to the annular ledge (24), and material has been added into the cavity (5) formed between the walls (22). This is described in Gueret, column 5, lines 47 — 49 which read:

"the film (3) is heat sealed onto the piece (20) and then the chimney (22) is filled with the substance P and the gasket (23) is put into place".

The gasket/membrane is not formed integrally with the remainder of the cap, although in use it does fit closely around the walls (22) and effectively seals off the second cavity (5). However, it is not physically connected in the manner required by the present invention.

The flexible membrane of the present application is formed integrally with the cap. In particular it is formed integrally with the first shoulder element.

Accordingly, and to clarify the issue, claim 1 has been amended to include the subject matter of previously submitted claim 2 (now cancelled), namely that:

"the outer skirt, the flexible membrane, the shoulder and the inner skirt are formed integrally."

The applicants consider that this amendment is fairly based, given that claim 2 previously read:

"wherein the flexible membrane is formed integrally with the closure element".

The amendment is also fairly based by reference to Figure 1 of the present application which illustrates a second closure in which all parts are formed integrally with one another.

The applicants submit therefore that claim 18 as amended herein is not anticipated by Gueret. Further, the applicants submit that claim 18 is also inventive over the cited prior art in that, being integrally formed, the outer skirt, flexible membrane, shoulder and the inner skirt form a cup (when oriented with the flexible membrane at the bottom) capable of holding a substance without leakage. This is a very important feature as the closure element for a dispenser may be used to hold a substance to be dispensed. In some instances the substance may be in powder or liquid form, in which case it is essential that the closure element is leak proof — as is the case of the present closure element in which the outer skirt, flexible membrane and connecting shoulder are formed as a unitary one-piece arrangement.

The remaining claims rejected in this Office Action all depend directly on claim 18, and as the applicants consider that claim 18, amended as discussed herein is both novel and inventive, the same applies to the dependent claims.

Conclusion

It is respectfully submitted that the claims as they have been amended/newly presented, are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.


Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN HAM & BERNER, LLP


Benjamin J. Hauptman
Registration No. 29,310

USPTO Customer No. 22429
1700 Diagonal Road, Suite 300
Alexandria, VA 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: November 23, 2009
BJH:KJT/tal